

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 15950 of 2000(W)

PETITIONER:

**THE SR.DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, TRIVANDRUM.**

**BY ADV. SRI.T.S.RAJAN, SC, RAILWAYS
SRI.MURALEEDHARA KAIMAL, ADDL.CGSC**

RESPONDENTS:

- 1. N.K.ALIYAR, CARETAKER,
OFFICERS REST HOUSE,
ERNAKULAM SOUTH RAILWAY STATION,
ERNAKULAM.**
- 2. THE ASSISTANT LABOUR COMMISSIONER ©,
39/1329, KALATHIPARAMBIL ROAD,
ERNAKULAM SOUTH, COCHIN 16.**
- 3. THE REGIONAL LABOUR COMMISSIONER ©,
39/1329, KALATHIPARAMBIL ROAD,
ERNAKULAM SOUTH, COCHIN 16.**

BY

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP. NO.15950/2000

ORDER ON CMP. NO.26057/2000 IN OP. NO.15950/2000

DISMISSED

23.10.2007

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER/ ORDER DT. 14.10.80 OF RAILWAY BOARD.

EXT.P2:- COPY OF THE PARAGRAPH 2005, , 2006 & 07 OF INDIAN RAILWAY ESTABLISHMENT MANUAL VOL. II 1990 EDITION.

EXT.P3:- COPY OF THE APPLICATION DT. 23.1.98 IN GA. NO.48/(4)/98 FILED BY THE RESPONDENT BEFORE THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE WRITTEN STATEMENT IN GA. 48(4) /98 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE ORDER DT. 29.7.98 OF THE 2ND RESPONDENT IN GA. 48(4) /98.

EXT.P6:- COPY OF THE APPEAL G.A. NO.75/98 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P7:- COPY OF THE ORDER DT. 6.12.99 IN APPEAL GA. NO.75/98 OF THE 3RD RESPONDENT.

EXT.P8:- COPY OF THE COMMON ORDER DT. 1.2.96 OF CAT IN OA. 631/94.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.15950 OF 2000

Dated this the 23rd day of October, 2007

JUDGMENT

The first respondent filed an application under the Payment of Gratuity act, 1972, hereinafter referred to as 'the Act', for relief against the writ petitioner Southern Railways. The controlling authority also hold that the first respondent was entitled to Rs.6,044/- towards gratuity for 18 years of casual labour. That order has been affirmed by the appellate authority as per Ext.P7. This writ petition is filed challenging those decisions.

2. The contentions of the Railways on the entitlement of the first respondent was considered and it was ultimately held that the first respondent, who started working as a casual labourer on 15.11.1965, was regularised with effect from 15.10.1983 and there is no dispute about his regularisation from that date. The continuity in service was thus found. In answer to the ground raised by the Railways that the first respondent is not entitled to

claim benefit of the casual labour period, the appellate authority held that the first respondent is eligible for gratuity from the date of empanelment. After absorption into regular Railway service, he would hold a post under Central Government, which is excluded from the definition of the term 'employee' in the Act. It is accordingly that he will be entitled for gratuity for his casual period of service from the date of his initial engagement. I do not find any legal infirmity or jurisdictional error in the impugned decisions.

In the result, the writ petition fails. The same is accordingly dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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